

***United States Court of Appeals
for the Second Circuit***



**APPELLANT'S
BRIEF &
APPENDIX**

75-1403

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To be argued by

LAWRENCE H. LEVNER

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

Docket No. 75-1403

UNITED STATES OF AMERICA,

Appellee,

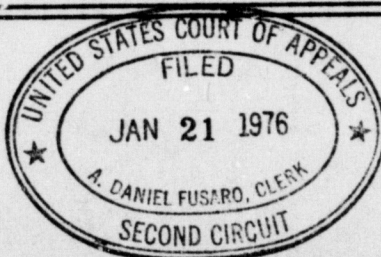
-v-

ANTONIO REYES,

Appellant.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

BRIEF & APPENDIX OF APPELLANT, ANTONIO REYES



LAWRENCE H. LEVNER
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PAGINATION AS IN ORIGINAL COPY

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In The
UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT
Docket No. 75-1403

UNITED STATES OF AMERICA,

Appellee,

v.

ANTONIO REYES,

Appellant.

BRIEF & APPENDIX FOR APPELLANT

QUESTION PRESENTED

Did the Court below abuse its discretion in
re-sentencing the defendant to a term of incarceration
of ten years?

STATEMENT OF FACTS

A. PRELIMINARY STATEMENT

On June 6, 1975, a final judgment of conviction was entered in the United States District Court for the Southern District of New York (Brieant, J.) convicting the defendant-appellant, Antonio Reyes ("the defendant") and another of conspiring to violate the narcotic laws and of two substantive violations of that law; all in violation of 21 United States Code, Section 841(a)(1) and 841(b)(1) (A. 5).*

The appellant was sentenced to a term of 12 years in prison to be followed by 3 years parole. (A.21).

Following his conviction, appellant timely filed a notice of appeal to the United States Court of Appeals for the Second Circuit. On that appeal, the defendant urged inter alia that the sentence of 12 years imprisonment imposed on him by the District Court was unduly harsh. On or about September 17, 1975 this Court affirmed the judgment of conviction (A.42). United States v. Quiles, ___ F. 2d ___, (2nd Cir., 1975).

* References in parentheses preceded by the prefix "A." refer to the appropriate pages in the defendant's Appendix. References bearing the prefix "R." refer to the appropriate pages in the Trial Transcript on file in this Court.

Following the affirmance of his conviction by this Court, the defendant moved the District Court pursuant to Rule 35 of the Federal Rules of Criminal Procedure for reduction of his sentence (A.24-60). On October 28, 1975, the Court below modified the sentence previously imposed by re-sentencing the defendant to serve a term of 10 years in prison to be followed by 3 years special parole (A. 61). The defendant now appeals from that order.

B. THE INITIAL SENTENCING OF THE DEFENDANT

Although the Court below recognized that the defendant was not a significant drug dealer, nor the main target of the government's investigation (A.20-21), it believed albeit erroneously, that the defendant was a serious threat to society (A.18-19). Therefore, the Court initially sentenced the defendant to a period of imprisonment for a period of 12 years to be followed by 3 years special parole.

Perusal of the sentencing minutes reveals that the two main factors considered by the Court were the fact that the defendant had been on welfare for six or seven years (A. 18) and had eleven criminal convictions over the fourteen year period preceeding his conviction for the instant offense (A. 20). As will be demonstrated infra at Point I, it was improper to consider the former while the latter was based on wholly erroneous information.

C. THE DEFENDANT'S RULE 35 MOTION AND HIS RESENTENCING

Following his unsuccessful direct appeal to this Court, the defendant moved in the Court below pursuant to Rule 35 of the Federal Rules of Criminal Procedure to reduce and modify his previously imposed sentence. In that application, the defendant urged that his sentence was improper because it was based on an erroneous presentence report; it was unduly harsh when juxtaposed with the sentences imposed on Mr. Reyes' co-defendants; and when compared with other defendants convicted in other cases of a similar nature.

More particularly, the defense urged that Mr. Reyes, concededly a minor participant in the conspiracy for which he was convicted, received more than three times the sentence of any of his co-defendants. For example, Brunhilda Rodriguez, who with the defendant played a role of "steerer" in the conspiracy, received 18 months.* Hector Soto and Luis Medina both sellers were sentenced to prison terms of 3½ years (A.7-8). Finally Ricardo Quiles, was sentenced to 4 years as a young adult offender (A.7-8).

* That sentence has now been reduced to 1 year.

In addition, the defendant developed through a statistical analysis that he had received a sentence commensurate with second and third offenders who were major narcotic dealers. See e.g. United States v. Sperling, 506 F. 2d 1323 (2nd Cir., 1974).*

Finally, the defendant urged that the sentence below was based on erroneous information in his pre-sentence report as to his prior convictions and the fact that he received welfare aid. Using original source material (rather than the "rap" sheets provided by the New York City Police Department)**, defendant demonstrated that between 1961 and 1969 he had been convicted of no more than six petty offenses rather than the eleven major crimes relied upon by the Court below in sentencing (A.36-53). Moreover, the defense demonstrated that between 1969 through and including 1973, Mr. Reyes had no conflicts with any law enforcement authority (A.39-41).

D. THE DECISION OF THE COURT BELOW

Totally rejecting the defendant's disparity arguments and misconstruing the thrust of defendant's position on the erroneous nature of the presentence report the Court below held:

* See also, The Second Circuit's Study On Sentencing, Partridge & Eldridge (1974).

** Defendant's convictions were for possession of a hypodermic needle in 1962, 2 convictions for petty larceny and 3 convictions for disorderly conduct (A.43-53).

"The sole significant point raised in the annexed motion is that the Court, upon imposing sentence, may have incorrectly stated that defendant had suffered eleven criminal convictions in the past 14 years, while defendant's counsel claims that there is a variance in the records concerning Reyes' prior criminal conduct, caused apparently in part by his use of different names. Counsel for defendant contends that the record supports an inference of no more than "seven or eight convictions." The Court accepts the statements as true for purposes of this motion, and will reduce sentence accordingly.

The defendant is resentenced to serve a term of ten (10) years, to be followed by a three (3) year special parole, as required by Title 21 of the United States Code."

POINT I

THE COURT BELOW ABUSED ITS DISCRETION
IN RESENTENCING THE DEFENDANT TO A
TERM OF INCARCERATION OF 10 YEARS.

A. INTRODUCTION

In a proper case, the Federal Courts of Appeals are willing to exercise their power of factual review of sentencing procedures to avoid plain injustices. United States v. Malcolm, 432 F. 2d 809 (2nd Cir., 1970); United States v. Schwartz, 500 F. 2d 1350 (2nd Cir., 1974); United States v. Slutsky, 514 F. 2d 1222 (2nd Cir., 1975); and United States v. Tucker, 404 U.S. 443 (1972).

In the case at bar, the Court's reliance upon an erroneous presentence report, after the correct facts were brought to its attention; the Court's unfair reliance upon defendant's economic condition and the great disparity between sentences given to the defendants in the instant case, almost in inverse order of their culpability, rises, we submit, to the level of such plain injustice.

B. THE ERRONEOUS PRESENTENCE REPORT

Both at the time of original sentencing and on resentence the Court was either misinformed or misunderstood various material facts regarding the defendant's prior criminal record. On sentencing, the Court assumed that that defendant had been convicted of 11 crimes in 14 years, and on resentence he believed that counsel for the defendant had urged no more than 7 or 8 convictions. Each of the Court's assumptions were wholly erroneous. In fact, defense counsel in his Rule 35 application informed the Court that the defendant had been convicted of no more than six petty offenses (A.36-39).

This genre of misinformation or misunderstanding has been held to render the entire sentencing procedure invalid as a violation of due process. Townsend v. Burke, 334 U.S. 736, 740, 741; United States v. Malcolm supra at p. 816 and United States ex rel. Jackson v. Myers, 374 F. 2d 707 (3rd Cir., 1967). In Myers, the Third Circuit held in part:

"... this prisoner was sentenced on the basis of assumptions concerning his criminal record which were materially untrue. Such a result whether caused by carelessness or design, is inconsistent with due process of law, and such a conviction cannot stand."

In the instant case, the erroneous presentence report and the Court's failure on re-sentence to adequately correct that report or the assumptions arising therefrom is as insidious as if that report and the sentence on which it was based were predicated on false information as to the defendant's involvement in other crimes. cf. United States v. Weston, 448 F. 2d 629 (9th Cir., 1971). See also, United States v. Janiec, 464 F. 2d 126 (3rd Cir., 1972) and United States v. Tucker supra.

In Tucker, the Supreme Court held that:

"But these general propositions do not decide the case before us. For we deal here, not with a sentence imposed in the informed discretion of a trial judge, but with a sentence founded at least in part upon misinformation of constitutional magnitude. As in Townsend v. Burke, 334 U.S. 736, 68 S.Ct. 1252, 92 L.Ed. 1690, "this prisoner was sentenced on the basis of assumptions concerning his criminal record which were materially untrue." Id., at 741, 68 S.Ct., at 1255. The record in the present case makes evident that the sentencing judge gave specific consideration to the respondent's previous convictions before imposing sentence upon him. Yet it is now clear that two of those convictions were wholly unconstitutional under Gideon v. Wainwright, 372 U.S. 335, 83 S.Ct. 792, 9 L.Ed. 2d 799.

* * *

... the real question here is not whether the results of the Florida and Louisiana proceedings might have been different if the respondent had had counsel, but whether the sentence in the 1953 federal case might have been different if the sentencing judge had known that at least two of the respondent's previous convictions had been unconstitutionally obtained."
(Footnotes omitted.)

C. THE COURT IMPROPERLY CONSIDERED THE DEFENDANT'S ECONOMIC BACKGROUND

During the course of the defendant's sentencing, the Court made specific note of the fact that Mr. Reyes had been "more or less on welfare **for** the past six or seven years ..." (A.18-19). While this assessment of the defendant's economic circumstances may have been true, his poverty should not have been a factor in determining his sentence.

It is almost beyond the necessity for citation that reliance on a defendant's socio-ethnic background as a criteria in sentencing is wholly improper. (See "The Second Circuit Sentencing Study, A Report To The Judges Of The Second Circuit", Partridge & Eldridge, 1974, pages 53-54.")

In the instant case, it is crystal clear that the Court below viewed the defendant's social and economic background as a derogatory factor in imposing sentence. This Court should not permit that kind of reasoning to stand.

D. THE DISPARITY OF SENTENCE IMPOSED ON THE DEFENDANT
WHEN COMPARED WITH THAT OF HIS CO-DEFENDANTS REQUIRES
A FINDING OF ABUSE OF DISCRETION

Perusal of the government's brief submitted on direct appeal (pp 3-5) reveals that the defendant was at the bottom rung of a middle level narcotics conspiracy. Indeed, the Court below stated on the record that "I don't find you to be a significant drug dealer in your own right. You certainly were not the main target of this particular investigation" (R. 411). Concededly, the total remuneration received by the defendant was \$100.00 (TR. 57-59), while others involved received substantially more **money for** their unlawful efforts. Nevertheless, at sentence, the defendant received by far the harshest sentence of all.* Under these circumstances, it is no understatement to conclude that the sentence imposed upon the defendant was cruel and unusual when juxtaposed with that imposed on his co-defendants.

The disparity of sentences as imposed by different judges within this Circuit is well known to this Court. (See "Court Study Underscores Disparity In Sentencing", N.Y. Law Journal, Sept. 9, 1974). Indeed, the disparity in imposing radically different sentences on defendants charged with the same or similar offenses is readily acknowledged to be one of the major flaws within our criminal justice system.

Frankel, Criminal Sentences, Law Without Order, Hill and Wang (1973). When that disparity occurs within a single case that flaw becomes exacerbated so as to rise to the level of a violation of due process of law. See Furman v. Georgia, 408 U.S. 238 (1972) (Brennan, J., concurring).

In short, the disparity of sentences imposed in this very case is, we respectfully submit, shocking and cries out for appellate review and upon that review for remand to another District Court Judge for resentencing.

CONCLUSION

FOR ALL OF THE FOREGOING REASONS, THE JUDGMENT OF CONVICTION PREVIOUSLY IMPOSED SHOULD BE VACATED, AND THIS CASE REMANDED FOR RESENTENCE BEFORE A DIFFERENT DISTRICT COURT JUDGE.

Respectfully submitted,

LAWRENCE H. LEVNER
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Antonio Reyes
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New York, New York

APPENDIX

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D. C. Form No. 100
CRIMINAL DOCKET

JUDGE BRIEANT

74 CRIM. 382

TITLE OF CASE	ATTORNEYS
THE UNITED STATES	For U. S.:
VS.	James P. Lavin, AUSA
RICARDO QUILES-1,3,5,6,	264-6347
VICTOR SOTO-1,4,5,8	
HECTOR SOTO-1,3,4,5,9	
SANTIAGO MEDINA-1,2	
ANTONIO REYES-1,2,3	For Defendant:
BRUNILDA RODRIGUEZ-1,3	
JOSEPH CACCIOLA-1,7	

ABSTRACT OF COSTS	AMOUNT	CASH RECEIVED AND DISBURSED			
		DATE	NAME	RECEIVED	DISBURSED
(07)					
Fine,					
Clerk,					
Marshal,					
Attorney,					
XXXXXXXXXX 21					
XXXXXXXXXX 846,812.841(a)(1),(b),924(c)(2).					
Consp. to viol. Fed. Narcotic Laws.(Ct.1)					
Distr. & possess. w/intent to distr.Heroin,1.(Cts.2-7)					
Possess. of firearm dur. commission of felony.(Cts.8&9)					
(Nine Counts)					

DATE	PROCEEDINGS
-11-74	Filed indictment.
4-22-74	Deft Soto appears(atty present)Deft pleads not guilty, 10 days for motions Case assigned to Judge Brieant, bail fixed at \$10,000 PRB secured by \$250.00 cash, bond co-signed by wife & mother. Pierce,J.
	Deft Quiles-present, adj. to 4-29-74, no atty present- Court directs a not guilty plea, bail cont'd at \$10,000 PRB secured by \$250.00 cash.
4-22-74	Deft Cacciola-present(atty present)deft pleads not guilty, 10 days for mo case assigned to Brieant,J. bail fixed at \$10,000 PRB secured by

DATE	PROCEEDINGS	CLERK'S FEES	
		PLAINTIFF	DEFENDANT
	\$1,000 Cash co-signed by wife.		
	Deft Medina not present (no atty) Court directs a not guilty plea. Adj/ to 4-29-74. Pierce, J.		
4-22-74	Deft Victor Soto present with atty R. Mitchell-Deft pleads not guilty 10 days for motions, bail fixed at \$10,000 PRB secured by \$250.00 cash.		
	Deft Rdoriguez appears(atty Ed Panzer)deft pleads not guilty, 10 days for Motions, bail fixed at \$1,000 PRB secured by \$100 cash.		
	Deft Reyes appears(no atty)Court directs a not guilty plea, bail fixed at \$10,000 PRB secured by \$500.00 cash. adj. to 4-29-74. Pierce, J.		
4-26-74	Filed affdvt. for W/H/C Ad Pros. for SANTIAGO MEDINA.		
4-29-74	DEFTS: RICARDO QUILES, VICTOR SOTO, HECTOR SOTO, ANTONIO RYES, PLEADS NOT GUILTY; 10 days for motion, case referred to BRIEANT, J. Bails fixed by mag. cont'd. BAUMAN, J.		
5-2-74	CACCIOLA - Filed notice of appearance by David Greenfield, 115 B'Way NYC 349-7980.		
5-2-74	QUILES - Filed notice of appearance by Jerold Weissfeld, 160 B'Way BA - 7-9826.		
5-2-74	REYES - Filed notice of appearance by L.H. Levner 521 5th Ave. MU-7-4640.		
5-2-74	COHEN - Filed notice of appearance by Kalman V. Gallop 1345 Ave. of Americas, 246-2880.		
5-3-74	Deft. Santiago Medina Produced on writ. (No Atty Present) Adj'd. until 5-10-74. Deft. remanded. BAUMAN, J.		
Cont'd on page 3			

DATE	PROCEEDINGS
5-3-74	Filed Govt. 'notice of readiness for trial.
5-10-74	RICARDO QUILES - Filed affdvt. and notice of motion for B/P.
5-13-74	SANTIAGO MEDINA= Writ adjourned to 5-10-74 - Deft. REMANDED.
6-28-74	RICARDO QUILES= Filed MEMO ENDORSEMENT on Deft's motion for B/P. motion withdrawn. See transcript this date - SO ORDERED--BRIEANT, J. (mailed notice).
6-28-74	RICARDO QUILES= Filed Deft's motion for discovery & inspection.
6-28-74	RICARDO QUILES= Filed MEMO ENDORSEMENT on Deft's motion for discovery & inspection. The within motion has been disposed of in accordance with directions made at a hearing this date. See transcript -SO ORDERED--BRIEANT, J. (Mailed notice)
7-18-74	ANTONIO REYES= Filed Mailed original CJA copy 1 to the A.O., WASH D.C. for payment --- BRIEANT, J. Filed CJA, copy 5, appointment of Interpreter, Richard Schoen, Box 427, Madison Ave Station, NYC 10010.
7-18-74	RICARDO QUILES & ANTONIO REYES= Mailed Original CJA copy 1 to the A.O. WASH, D.C. for payment --BRIEANT, J. Filed CJA copy #5, appointment of interpreter, Jose Melendez, 536 W. 173 St, NYC 10032.
6-26-74	SANTIAGO MEDINA= Mailed original CJA copy 1 to the A.O. WASH D.C. for payment --BRIEANT. Filed CJA appointment of Interpreter, Ms. Maria Elena Cardenas, 319 E. 93rd St, NYC 10028.
7-18-74	RICARDO QUILES+ Mailed Original CJA copy 1 to the A.O. WASH D.C. for payment-- BRIEANT, J. Filed C.J.A. Copy #5, appointment of Interpreter, Richard Schoen, Box 427, Madison Ave Station, NYC 10010.
8-6-74	Filed transcript of record of proceedings, dated JUN 29 1974
8-30-74	Filed transcript of record of proceedings, dated 7-11-74
6-28-74	QUILES (Jerold Weissfeld), RODRIGUEZ (Edward Panzer), CACCIOLA (D. Greenfield), REYES (L. Levner), present. Suppression hearing began and adj'd to 7-9-74.
7-9-74	Suppression hearing cont'd.
7-11-74	Hearing cont'd.
7-26-74	Hearing cont'd and concluded. Decision RESERVED- BRIEANT, J.
9-5-74	RICARDO QUILES= Filed CJA Appointment of Jerold C. Weissfeld, Court Reporter.
9-5-74	ANTONIO REYES = Filed CJA Appointment of Lawrence Levner, Court Reporter.
9-10-74	Filed transcript of record of proceedings, dated JUL 11 1974
9-10-74	Filed transcript of record of proceedings, dated JUL 9, 1974
	Cont'd on Page #4

DATE	PROCEEDINGS
25-74	Filed the following papers rec'd from Magistrate Raby (Mag# 73-1576): 6 Docket Entry Sheets - Criminal Complaint - Disposition Sheet - 6 Appointments of Counsel - Financial Affdvt's - 6 Appearance Bonds - 2 Mag. Temporary Commitments.
26-74	Def't. Guma present. Motion denied. See transcript of hearing dated 26-74
21-75	SANTIAGO MEDINA= Filed Def't's Notice of Motion to Quash and/or Dismiss Indictment.
30-75	SANTIAGO MEDINA= Filed Def't's Memorandum in support of Motion to Dismiss for lack of fast and speedy trial with MEMO ENDORSEMENT. Motion withdrawn. See transcrip of hearing this date. ---BRIEANT, J. (Pro-Se to m/n)
4-75	ANTONIO REYES= Filed Def't's Motion for Pre-Trial relief and Affirmation.
28-75	SANTIAGO MEDINA= (Atty Robert Leighton present) pleads GUILTY to COUNT 1 only. P.S.I. ordered. Sent. adj'd 2-25-75. Remanded. Interpreter J. Guma present--BRIEANT, J.
18-75	RICARDO QUILES, ANTONIO REYES, BRUNILDA RODRIGUEZ = Filed Pltff's MEMORANDUM & ORDER in reference to Def't's motion to Suppress. - Def't's motions to suppress are in all respects DENIED--BRIEANT, J. (Mailed notices).
11-75	SANTIAGO MEDINA= Mailed original CJA copy 1 to the A.O., Wash, D.C. for payment--BRIEANT, J.
14-75	SANTIAGO MEDINA= Filed CJA appointment of Interpreter, Joaquin R. Guma, 319 E. 93 St, N.Y.C. 10028 --BRIEANT, J.
25-75	SANTIAGO MEDINA= Filed Judgment and Commitment Order - The Def't is hereby committed to the custody of the Atty General for a period of THREE and ONE-HALF (3½) YEARS on COUNT 1. Pursuant to Section 841 of Title 21, U.S. Code, Def't is placed on SPECIAL PAROLE for a period of THREE (3) YEARS, to commence upon expiration of confinement. The Court pursuant to Section 4082 of Title 18, U.S. Code, recommends that the Atty General arrange to have this sentence served concurrently with the State sentence Def't is currently serving in so far as the sentence can be served concurrently. The balance of this sentence, if any, may be served in an institution to be designated by the Attorney General. COUNT 2 is DISMISSED on motion of Def't's counsel with consent of the government. Def't produced in Court on a Writ of Habeas Corpus Ad Prosequendum. Writ satisfied. ----BRIEANT, J.
3-13-75	ANTONIO REYES= Filed MEMO ENDORSEMENT on Def't's motion for Pre-Trial relief filed 2-4-75. Motion DENIED, see transcrip of hearing this date, SO ORDERED--BRIEANT, J (m/n)
3-14-75	ANTONIO REYES= Filed Pltff's Memorandum of Law.
3-14-75	ANTONIO REYES= Filed affdvt of Jeffrey I. Glekel, AUSA, in opposition to Def't's motion to dismiss indictment.
3-13-75	SOTO, VICTOR= Bench Warrant Issued.
3-24-75	SANTIAGO MEDINA= Filed commitment & entered return - Executed this judgement and commitment in part by mailing a copy to the Warden of Clinton Correctional Facility, the designated institution for concurrent service of this sentence - U.S. MARSHAL.
4-23-75	RICARDO QUILES= Filed Def't's acknowledgement of his constitutional rights.

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110 Rev. Civil Docket Continuation

DATE	PROCEEDINGS	Date Order of Judgment Note
3-23-75	RICARDO QUILES= Deft (Atty Jerold Weissfeld) present, withdraws previous plea of NOT GUILTY and pleads GUILTY to COUNTS 1 & 3. P.S.I. ordered. Sentence adj'd to June 5, 1975. Bail cont'd. ---BRIEANT, J.	
9-75	Filed Pltff's Requests to Charge.	
6-75	JOSEPH CACCIOLA= Deft (David Greenfield) present. Withdraws previous plea of NOT GUILTY and pleads GUILTY to count #1 only. P.S.I. ordered. Sentence adj'd to June 17, 1975. Bail cont'd. Abraham Solomon appointed counsel for B. RODRIGUEZ. Edward Panzer relieved as counsel. ---BRIEANT, J.	
6-75	Jury Trial began as to Deft's, H. SOTO, B. RODRIGUEZ, and ANTONIO REYES. Deft. VICTOR SOTO - severed from Trial, Bail forfeited, ---BRIEANT, J.	
7-75	HECTOR SOTO= Deft, (Atty J. Lipson) present. Withdraws previous plea of NOT GUILTY and pleads GUILTY to COUNTS 1 & 3. P.S.I. ordered. Sentence adj'd to 6-18-75. Bail cont'd and enlarged to include Eastern Dist. of N.Y. TRIAL CONTINUED---BRIEANT, J.	
8-75	Trial continued.	
9-75	Trial continued and concluded. Jury verdict: Deft. A. REYES GUILTY ON COUNTS 1, 2, & 3. P.S.I. ordered. Sentence adj'd to 6-6-75. DEFT REMANDED in lieu of bail increased to \$5,000. Cash or surety. Deft. B. RODRIGUEZ GUILTY ON COUNTS 1 & 3. P.S.I. ordered. Sent. adj'd to 6-20-75. Bail cont'd. ---BRIEANT, J.	
5-13-75	ANTONIO REYES= Remand issued, dated 5-9-75.	
6-75	ANTONIO REYES= Filed Judgment And Commitment Order= The Deft is hereby committed to the custody of the Atty. General for imprisonment for a period of TWELVE (12) YEARS on each of COUNTS 1, 2, and 3, to run concurrently with each other. Pursuant to Section 841 of Title 21, U.S. Code, Deft. is placed on SPECIAL PAROLE for a period of THREE (3) YEARS, to commence upon expiration of confinement. Deft. remanded. ---BRIEANT, J.	
5-75	RICARDO QUILES= Filed Judgment And Probation/Commitment Order= The Deft. is hereby committed to the custody of the Atty. General on COUNTS 1 and 3 for treatment and supervision as a YOUNG ADULT OFFENDER pursuant to Section 5010(b) of Title 18, U.S. Code, as extended by Section 4209 of Title 18, U.S. Code, until discharged by the Federal Youth Correction Division of the Board of Parole as provided in Section 5017(c) of Title 18, U.S. Code. COUNTS 5 and 6 are DISMISSED on the motion of Deft's counsel with the consent of the Governemnt. Deft cont'd on present Bail until June 9, 1975 at which time he is to surrendered in Room 506 for services of sentence. ---BRIEANT, J.	
7-75	VICTOR SOTO= Mailed original CJA Copy #1 to the A.O., Wasd. DC for payment---BRIEANT, J.	
9-75	ANTONIO REYES= Mailed original CJA Copy #1 to the A.O., Wash. DC for payment-BRIEANT, J. Filed CJA appointment of counsel, Samuel Alfonso, 471 39th St. Brooklyn, NY Tel #UL-4-7849.	
6-75	ANTONIO REYES= Filed Deft's Notice of Appeal to U.S.C.A. for the 2nd Circuit. Leave to proceed on Appeal in forma pauperis is granted---BRIEANT, J. (n/m to USA and Deft.)	

A-6

DATE	PROCEEDINGS	Date Order Judgment No.
20-75	A. Reyes=Filed Remand dated 5-9-75.	
13-75	Filed transcript of record of proceedings dated MAY 6, 7, 8, 9 - 1975	
6-19-75	HECTOR SOTO=Filed JUDGMENT & COMMITMENT ORDER-The deft. is hereby committed to the custody of the Atty Gen. for imprisonment on counts 1&3 pur. to Sec. 4208(b) of Title 18, U.S. Code, for study, report and recommendations, as described in Sec. 4208(c). This Commitment is deemed to be for the maximum sentence prescribed by law, to wit: FIFTEEN (15) YEARS, unless altered pur. to said sec. upon the receipt of the report and recommendations. The results of such study, together with any recommendations which the Director of the Bureau of Prisons believes would be helpful in determining disposition of the case shall be furnished to the Court within a period of THREE(3) MONTH....COUNTS 4, 5, and 9 are dismissed on deft's counsel with consent of the Govt. ---Briant, J.	
6-20-75	BRUNILDA RODRIGUEZ=Filed JUDGMENT & COMMITMENT-The deft is hereby committed to the custody of the Atty Gen. for a period of EIGHTEEN (18) MONTHS on each of Counts 1 and 3 to run concurrently with each other. Pur. to Sec. 841 of Title 21, U.S Code, deft is place on Special Parole for a period of THREE (3) YEARS, to commence upon expiration of confinement....Deft. is continued on pre-bail until she posts bail pending appeal fixed at \$1,000.00. Personal Recognizance Bond secured by \$100.00 cash.....Briant, J.	
5-25-75	BRUNILDA RODRIGUEZ=Filed Deft's Notice of Appeal from Final Judgment ent 6-20-75....to the USCALeave to appeal in forma pauperis is granted.Briant, J.....Copies of Appeal mailed to Deft-Deft's atty., U.S. Atty's office-Reilly, Asst US Atty. on 6-26-75.	
7-16-75	Rodriguez; Filed transcript of record of proceedings dated 6-20-75.	
7-2-75	Filed transcript of record of proceedings dtd: May 6-75.	
7-17-75	JOSEPH CACCIOLA=Application by Deft's Attorney to discharge Bail-exonerated. Deft. R.O.R. ---CONNER, J.	
7-16-75	BRUNILDA RODRIGUEZ= Filed notice that the 3rd Supp record on appeal has been certified and transmitted to the U.S.C.A. for the 2nd Circuit.	
7-7-75	BRUNILDA RODRIGUEZ= Filed Notice that the 2nd Supp of record on appeal has been certified and transmitted to the U.S.A.C. for the 2nd Circuit.	
6-27-75	Filed notice that the original record on appeal has been certified and transmitted to the U.S.C.A. for the 2nd Circuit.	
7-2-75	Filed notice that the supplemental record on appeal has been certifice and transmitted to the U.S.C.A. for the 2nd Circuit.	
7-17-75	BRUNILDA RODRIGUEZ= Mailed original CJA Copy #1 to the A.O., Wash. D.C. for payment. ---Briant, J.	
7-17-75	BRUNILDA RODRIGUEZ= Filed CJA appointment of Atty, Abraham Solomon, 95 Baxter St, N.Y.C. 10013 ---BRIANT, J.	

(Cont'd on Page #7)

110 Rev. Civil Docket Continuation

DATE	PROCEEDINGS	Date Order Judgment No.
11-75	RODRIGUEZ= Mailed original CJA Copy #1 to the A.O., Wash, DC for payment--BRIEANT, J.	
13-75	RICARDO QUILES= Mailed original CJA Copy #1 to the A.O., WASH., D.C for payment.---BRIEANT, J.	
11-75	ANTONIO REYS= Mailed original CJA Copy #1 to the A.O., WASH, D.C. for payment.---BRIEANT, J.	
20-75	ANTONIO REYES= Filed commitment & entered return, Deft. delivered to Warden, Fed. DET. HQRTS 6-6-75	
25-75	RICARDO QUILES= Filed commitment & entered return, Deft. delivered to Fed. Corr. Inst, TALLAHASSEE, Fla. 7-10-75	
10-75	HECTOR SOTO= Filed commitment & entered return, Deft. delivered to Warden, Fed. DET. HQRTS, NYC 6-18-75	
24-75	HECTOR SOTO: Filed Final Judgment-defendant having been originally committed to the custody of the Attorney General on counts 1 and 3 pursuant to Title 18, U.S. Code, for imprisonment for a period of FIFTEEN (15) YEARS and for study and report as described in Title 18, U.S. Code, Section 4208(c) and the Court having now received and considered the report of such study. IT IS ORDERED AND ADJUDGED that the sentence is amended and the defendant is sentenced to THREE and ONE-HALF (3½) YEARS on each of counts 1 and 3, to run concurrently with each other. Pursuant to the provisions of Section 841 of Title 21 U.S. Code, defendant is placed on Special Parole for a period of THREE (3) YEARS, to commence upon expiration of confinement. Pursuant to the provisions of Section 4209(a)(2) of Title 18, U.S. Code, defendant shall become eligible for parole at such time as the Board of Parole may determine. Defendant remanded. Court recommends commitment at Federal Correctional Institution-Danbury, Ct. per letter dated 7-29-75 by Dr. Louis Rogol, Chief, Health Programs, that defendant's health could be better controlled at FCI-Danbury. BRIEANT, J.	
-75	ANTONIO REYES & BRUNILDA RODRIGUEZ= Filed U.S.C.A. Mandate. The Judgments of the District Court be and they hereby are affirmed. Judgment entered 10-1-75-CLERK (m/h)	
8-75	RICARDO QUILES= Filed MEMO RECOMMENDATION on Deft's letter dated 10-1-75 in reference to reduction of sentence. It is DENIED for want of jurisdiction. See Rule 35, F.R.Crim.P. SO ORDERED---BRIEANT, J. (Pro-Se to m/h)	
20-75	ANTONIO REYES= Filed Deft's Notice of Motion for an order modifying and reducing sentence previously imposed.....at 10-23-75....at 9:30AM.	
23-75	ANTONIO REYES= Filed Letter from U.S. Atty Office by T.G. Reilly Asst U.S. Atty, to Judge Briant, Dated 10-22-75.	
28-75	ANTONIO REYES= Filed Memo-Ent on back of Deft's motion for reducing sentence....	
The deft is resntenced to serve a term of 10 years, to be followed by a 3 yr. special parole, as req. by Title 21 of US Code...So Ordered..Briant, J. run	

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

- - - - -X

UNITED STATES OF AMERICA, :

-v- :

INDICTMENT

RICARDO QUILES, VICTOR SOTO, :
HECTOR SOTO, SANTIAGO MEDINA, :
ANTONIO REYES, BRUNILDA :
RODRIGUEZ, and JOSEPH CACCIOLA, :

74 Cr. 382 (CLB)

Defendants.

- - - - -X

The Grand Jury charges:

1. From on or about the 1st day of June 1973, and continuously thereafter up to and including the date of the filing of this indictment, in the Southern District of New York, RICARDO QUILES, VICTOR SOTO, HECTOR SOTO, SANTIAGO MEDINA, ANTONIO REYES, BRUNILDA RODRIGUEZ and JOSEPH CACCIOLA, the defendants, and others to the Grand Jury unknown, unlawfully, intentionally and knowingly combined, conspired, confederated and agreed together and with each other to violate Sections 812, 841(a)(1) and 841(b)(1)(A) of Title 21, United States Code.

2. It was part of said conspiracy that the said defendants, unlawfully, intentionally and knowingly would distribute and possess with intent to distribute Schedule I and II narcotic drug controlled substances the exact amount thereof being to the Grand Jury unknown in violation of Sections 812, 841(a)(1) and 841(b)(1)(A) of Title 21, United States Code.

COUNT TWO

A-10

The Grand Jury further charges:

On or about the 17th day of September, 1973, in the Southern District of New York, SANTIAGO MEDINA and ANTONIO REYES, the defendants, unlawfully, intentionally and knowingly did distribute and possess with intent to distribute, a Schedule I narcotic drug controlled substance, to wit, approximately 24.14 grams of heroin.

(Title 21, United States Code, Sections 812, 841(a)(1) and 841(b)(1)(A) and Title 18, United States Code, Section 2.)

COUNT THREE

The Grand Jury further charges:

On or about the 15th day of October, 1973, in the Southern District of New York, ANTONIO REYES, BRUNILDA RODRIGUEZ, HECTOR SOTO and RICARDO QUILES, the defendants, unlawfully, intentionally and knowingly did distribute and possess with intent to distribute, a Schedule I narcotic drug controlled substance, to wit, approximately 14.66 grams of heroin.

(Title 21, United States Code, Sections 812, 841(a)(1) and 841(b)(1)(A) and Title 18, United States Code, Section 2.)

OVERT ACTS

A-11

In pursuance of the said conspiracy and to effect the objects thereof, the following overt acts were committed in the Southern District of New York:

1. On or about September 17, 1973, the defendants SANTIAGO MEDINA and ANTONIO REYES were in Apartment No. 6 at 1800 Monroe Avenue, Bronx, New York.
2. On or about October 15, 1973, the defendant BRUNILDA RODRIGUEZ introduced the defendant HECTOR SOTO to an undercover officer of the Drug Enforcement Administration Task Force.
3. On or about October 15, 1973, the defendants HECTOR SOTO, BRUNILDA RODRIGUEZ and RICARDO QUILES were in Apartment 409 at 240 East 175th Street, Bronx, New York.
4. On or about October 16, 1973, the defendants HECTOR SOTO and VICTOR SOTO had in their possession approximately one-half ounce of heroin.
5. On or about October 26, 1973, the defendant RICARDO QUILES had in his possession approximately 53 grams of heroin.
6. On or about November 6, 1973, the defendant RICARDO QUILES met with the defendant JOSEPH CACCIOLA.

(Title 21, United States Code, Section 846.)

1 emb

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2
3 UNITED STATES OF AMERICA

4 vs.

74 Cr. 382

5 VICTOR SOTO, et al.

6 (Sentence of Antonio Reyes.)

7 June 6, 1975
8 9:45 A.M.

9 BEFORE:

10 HON. CHARLES L. BRIEANT, JR.
11 United States District Judge.

12 APPEARANCES:

13 FOR THE GOVERNMENT:

14 RONALD L. GARNETT, Assistant U.S. Attorney

15 FOR THE DEFENDANT REYES:

16 Lawrence Levner, Esq.

17 oo00oo

18 (Case called.)

19 MR. GARNETT: The government is ready, your Honor.

20 THE COURT: Mr. Levner, is there any reason why
21 sentence should not be imposed at this time?

22 MR. LEVNER: Only this, your Honor: I had an
23 opportunity to read the probation report and, in doing so, I
24 found I had to subpoena the undercover agent with reference
25 to certain statements as to the factual setup of this case.

There are certain words used with reference to my

1 emb

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2 client in this case, your Honor. After speaking to the
3 agent--

4 THE COURT: What are the words you are talking
5 about?

6 MR. LEVNER: The word was "broker." As far as
7 this involvment, that portion of the report, after speaking
8 to Mr. Dean, I was advised by him that this was prepared
9 prior to trial.

10 The very purpose for which I subpoenaed Mr. Angelo
11 Rodriques to this court was to put it in proper perspective,
12 Reyes part in--

13 THE COURT: I had all of his testimony. He was
14 fully cross-examined.

15 MR. LEVNER: I appreciate that, sir. I just feel
16 that it was--

17 THE COURT: What is it that you want me to do?

18 MR. LEVNER: He was not a broker.

19 THE COURT: Please answer my question.

20 MR. LEVNER: Set the record straight with respect
21 to his involvment.

22 THE COURT: I asked you a question. Are you ready
23 for sentence?

24 MR. LEVNER: No, I am not. I am waiting for Mr.
25 Rodriguez.

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2 THE COURT: Tell me what you want to do when Mr.
3 Rodriguez gets here.

4 MR. LEVNER: I will have Mr. Rodriguez tell the
5 court that Soto was an arm of this cartel or conspiracy;
6 that it was not Reyes who knew Soto. Reyes never knew Soto.

7 THE COURT: What do you say Reyes did?

8 MR. LEVNER: Mr. Reyes committed three crimes
9 which he was found guilty of, your Honor, but--

10 THE COURT: What was his posture or position in
11 connection with the other defendants?

12 MR. LEVNER: Yes, he knew Brunilda Rodriguez.

13 THE COURT: Yes? And what did he do?

14 MR. LEVNER: Brunilda--in fact, Brunilda was the
15 one who knew Soto, who was a broker for this group of
16 individuals that sold drugs in the Bronx. He never knew
17 Soto.

18 THE COURT: What did your client do?

19 MR. LEVNER: He was involved--

20 THE COURT: Don't give me silly verbs like
21 "he was involved." What did he do?

22 MR. LEVNER: He committed a crime. He was involved
23 in a conspiracy.

24 THE COURT: Yes. And how did he go about doing
25 that?

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2 MR. LEVNER: By introducing the undercover
3 officer to one Brunilda Rodriguez.

4 THE COURT: Who had narcotics.

5 MR. LEVNER: No; who knew Mr. Soto who had and
6 sold narcotics.

7 THE COURT: What is a broker?

8 MR. LEVNER: Your Honor, I just didn't want--
9 there was an implication in my mind, your Honor, that wasn't
10 correct--

11 THE COURT: What is a broker?

12 MR. LEVNER: --that he was part of this group.
13 He became part of this group but he never knew Soto.

14 THE COURT: What is a broker?

15 (No response.)

16 THE COURT: A broker is somebody who introduces
17 a willing buyer to a willing seller in order to effect a
18 sale. Isn't that what a broker is?

19 MR. LEVNER: Correct.

20 THE COURT: Wasn't he a broker?

21 MR. LEVNER: Yes.

22 THE COURT: It's silly to proffer any testimony. I
23 heard the entire trial.

24 MR. LEVNER: I appreciate that, your Honor. I
25 was merely doing what I thought was proper in this particular

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2 case.

3 THE COURT: He was a broker. The report says
4 that he was a broker, and that's what he was.

5 He introduced the person who knew where to get
6 the narcotics to the buyer who wanted it and he didn't know
7 the buyer was an agent.

8 MR. LEVNER: Correct. Nor did he know the seller.

9 THE COURT: No, but he knew somebody who knew
10 the seller.

11 MR. LEVER: Yes, sir.

12 THE COURT: All right. Now, I decline to take
13 any evidence unless you show me specifically what evidence
14 you want to offer. As far as this word "broker" is concerned,
15 that was used by this probation officer, No. 1, they are
16 not lawyers; and 2, I don't think it is an incorrect state-
17 ment to say of him, concerning your client, that he was a
18 broker who had contacts and that he put the agent in touch
19 with the other defendants, which he did.

20 MR. LEVNER: Yes, sir.

21 THE COURT: All right. So I see no purpose in
22 taking any proof unless you give me a more detailed offer.

23 MR. LEVNER: That was my offer, your Honor. I
24 just thought since the court has many cases before it--

25 THE COURT: But the man is a broker. He was a

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2 broker.

3 MR. LEVNER: There is no question, your Honor. I
4 am not here arguing--

5 THE COURT: You subpoenaed this fellow down here
6 over nothing.

7 MR. LEVNER: Well, your Honor sees much more
8 clearly than I anticipated.

9 THE COURT: I heard the whole trial.

10 MR. LEVNER: I appreciate that.

11 THE COURT: A smoking gun case.

12 MR. LEVNER: I am not trying, your Honor, to--

13 THE COURT: Mr. Levner, is there any reason why
14 sentence should not be imposed at this time?

15 MR. LEVNER: No, your Honor.

16 THE COURT: All right. Mr. Reyes, is there any
17 reason why sentence should be deferred or not imposed at
18 this time?

19 THE DEFENDANT: No, your Honor.

20 THE COURT: You may be heard in your clients
21 behalf, Mr. Levner, if you wish to submit any information
22 in mitigation of sentence. I am declining to take any proof
23 from Rodriguez at this point in the absence of any showing
24 other than what has been said. The court heard the entire
25 trial and knows exactly what your client did.

1 emb

2 MR. LEVNER: Again I say, your Honor, I am here
3 in mitigation of sentence after a conviction of guilt by a
4 jury of three counts of the indictment that he was charged
5 with.

6 The defendant, for 17 years prior to these very
7 acts, was a drug user, was an addict. Three years prior to
8 1970 he became a member of the New York City methadone
9 program. Subsequent to his arrest but prior to his confic-
10 tion, your Honor, he has become drug free. It is the only
11 plus I can find about this man.

12 The fact that he is a good family man, has children,
13 has attempted to work, would you consider that in the
14 imposition of sentence?

15 You have heard the trial; you have heard the
16 testimony of--

17 THE COURT: What do you have to say about the way
18 he has worked?

19 MR. LEVNER: Your Honor, he was employed, I
20 understand, as a superintendent of a building, and prior to
21 that he was employed in a grocery store in the Bronx for a
22 period of one year.

23 THE COURT: He has been more or less on welfare
24 for the past six or seven years, according to the last line.

25 MR. LEVNER: Is that his wife, sir, or him?

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2 THE COURT: The defendant has been supported by
3 welfare for the past six or seven years. Mrs. Reyes and the
4 children are also receiving welfare. That's what is says.

5 MR. LEVNER: Well, there was some mention in the
6 report that he was employed for the period of a year in a
7 grocery, sir.

8 THE COURT: Yes, and he drove a taxicab, and he
9 was superintendent for \$20 a week without a place to live.

10 MR. LEVNER: Correct, sir.

11 THE COURT: Anything further?

12 MR. LEVNER: No, sir.

13 THE COURT: Mr. Reyes, do you have anything you
14 wish to say in your behalf, or do you wish to present any
15 information in mitigation of sentence?

16 THE DEFENDANT: What I have to say is that I have
17 a trade and I appreciate that. The only thing was that I
18 would like to see the guy, Luis Lopez, on the stand. That's
19 the only way that I can prove my innocence.

20 THE COURT: Well, I don't think there is anything
21 that Luis Lopez could say that could improve your situation.
22 As I understand it, Luis Lopez vouched for the informer, the
23 undercover agent, I suppose.

24 THE DEFENDANT: I understand that, but I know
25 that he was lying because when he sent Angel Rodriguez to

1 emb

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2 my house I wasn't doing anything wrong.

3 THE COURT: You didn't know Angel Rodriguez was a
4 policeman?

5 THE DEFENDANT: No, sir.

6 THE COURT: That's right. That's why you are in
7 trouble today.

8 THE DEFENDANT: All right.

9 THE COURT: I must say to you that I regard the
10 crime involved here as a very serious matter and what you
11 did is serious, but the problem presented by this defendant
12 goes further than that.

13 This is a man 37 years of age. You are married.
14 You have a family, and this is your eleventh criminal con-
15 viction in the past 14 years.

16 You also have a couple of open cases which haven't
17 been determined in Bronx County. And while it is true you
18 may have eliminated or disposed of your drug habits, the
19 court regards you as a chronic offender, and I am quoting
20 the words of Mr. Dean here in his evaluation that your past
21 performance gives little reason to believe you would function
22 in a law-abiding fashion, and you had the contacts, the
23 ability to put Mr. Rodriguez in touch with drugs, and I
24 don't find you to be a significant drug dealer in your own
25 right. You certainly were not the main target of this

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2 particular investigation, but the fact is that your conduct
3 represents a very serious threat to society. Both the
4 probation officer and the court believe that your conduct
5 warrants an extended term of imprisonment, and your past
6 conduct gives little reason to believe that you are going
7 to do any better in the future.

8 With that in mind, the court will now impose
9 sentence on all three counts to run concurrently.

10 You are sentenced to a term of 12 years to be
11 followed by 3 years special parole with respect to Title 21
12 of the United States Code upon expiration of the sentence.

13 Now, it would be the expectation of the court that
14 the State of New York would permit you to dispose of your
15 open counts because there would be no use in filing
16 detainers, and I trust and hope that he will do that for you.
17 If they in fact do give you a detainer, you may come back
18 and apply.

19 I am imposing sentence in the hope and expectation
20 that the state will be fair with you in connection with
21 such open matters as you may have. I am not considering any
22 suggestions of guilt as to those matters whatever in the
23 imposition of sentence, but I am relying on numerous prior
24 convictions which are listed here in the probation report
25 which indicate basically your involvement in a life of crime.

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2 I am informing you that this is a final judgment
3 of conviction and you are entitled to appeal, and in view
4 of the fact that you have no money, you are entitled to have
5 counsel take the appeal and have the clerk of this court
6 file for you as an indigent defendant, and I will direct the
7 clerk to do so unless you request otherwise.

8 Do you understand your right to appeal?

9 MR. LEVNER: Yes, he understands his right to
10 appeal, but he would like to say something.

11 THE COURT: You may be heard.

12 MR. LEVNER: Is it possible, your Honor, that
13 some notation be made on this file? He is very concerned
14 about his life.

15 THE COURT: About what?

16 MR. LEVNER: His welfare as far as being placed
17 or bdded in a federal detention pen where co-defendants of
18 his might be lodged.

19 THE COURT: I will ask the Attorney General not to
20 put him with co-defendants, but as far as I can see, he
21 has nothing to fear from co-defendants. He is equally a
22 victim of his own greed as they are. He didn't inform against
23 any co-defendants. He knows that, so I don't see any peril.

24 Which co-defendant is he concerned about? Did
25 he tell you?

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2 MR. LEVNER: I am quite sure it could be the
3 Soto brothers and Marino.

4 THE COURT: He is a fugitive. Who are you worried
5 about?

6 THE DEFENDANT: Everybody.

7 THE COURT: You won't be with Mrs. Rodriguez. They
8 put her in a different place. Possibly Cacciola and
9 Hector Soto, but I will notify the Bureau of Prisons.

10 I am directing the clerk of the court to file a
11 notice of appeal in your name and you are remanded and will
12 continue serving your sentence.

13 MR. LEVNER: Is that A-2 or A-1?

14 THE COURT: A-1. You see, we have this decision
15 in Slutsky which I don't really agree with. I don't think
16 he wants an A-2 sentence under current standards but I
17 don't think he would be very suitable for it anyway.

18 MR. LEVNER: All right. Thank you, your Honor.

19 MR. GARNETT: Thank you, your Honor.

20 (Sentence concluded.)
21
22
23
24
25

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
UNITED STATES OF AMERICA,

- against -

ANTONIO REYES,

Defendant.
-----X

District Court
Docket No. 74 CR 382
and Court of Appeals
Docket No. 75-1216

NOTICE OF MOTION

SIRS:

PLEASE TAKE NOTICE, that upon the indictment, the judgment of conviction, the affirmation of LAWRENCE H. LEVNER, ESQ., affirmed the **3** day of October, 1975, with exhibits annexed thereto, and all other papers and proceedings heretofore had herein, a motion will be made before the HON. CHARLES L. BRIEANT, JR., in the United States District Courthouse of the Southern District of New York, located at Foley Square, on the **28** day of October, 1975, at 9:30 A.M. in the forenoon of that day, or as soon thereafter as counsel can be heard, for an order pursuant to Rule 35 of the Federal Rules of Criminal Procedure, modifying and reducing the sentence previously imposed by the Court; and for such other and further relief as to this Court may seem just and proper under the foregoing circumstances.

Dated: New York, New York
October 1, 1975

YOURS, etc.

TO: PAUL J. CURRAN, ESQ.
United States Attorney
Southern District of New York

Clerk of the U.S.D.C.
Southern District of New York

LAWRENCE H. LEVNER
Attorney for Defendant
521 Fifth Avenue
New York, New York 10017
(212) MU 7-4640

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X

UNITED STATES OF AMERICA,

- against -

Docket No. 74 CR 382

ANTONIO REYES,

AFFIRMATION

Defendant.

-----X

The undersigned, an attorney admitted to practice before the courts of the State of New York, affirms the foregoing under the penalties of perjury.

I am the attorney for ANTONIO REYES and I make this affirmation in support of the defendant's application for an order pursuant to Rule 35 of the Federal Rules of Criminal Procedure reducing and modifying the sentence previously imposed on the defendant by this Court.

The defendant ANTONIO REYES was sentenced by this Court on June 6, 1975 after a conviction upon a jury trial of conspiring to violate the narcotics law (count 1) and of the substantive of offenses of possession with intent to distribute narcotic drugs (counts 2 and 3) all in violation of the laws of the United States of America. The defendant was sentenced to a term of imprisonment of 12 years to be followed by 3 years special parole.

The defendant respectfully bases his application on the following three separate and distinct reasons:

1. The disparity between the sentence imposed upon this defendant and the other defendants similarly convicted in

this matter.

2. The possibility that the probation report submitted to this Court was based upon erroneous information, to wit: the number of defendant's arrests and convictions.

3. The defendant's background and family history.

4. The disparity between the sentence imposed upon this defendant and other defendants similarly convicted in other cases of a similar nature.

Prior to an analysis and discussion of the above stated reasons, I verily believe that it would be appropriate to briefly summarize the procedural history and background of the instant case.

PROCEDURAL HISTORY

On or about November 6, 1972 the defendant was arraigned and charged with seven other individuals with a conspiracy to violate the narcotics law and further with possession and sale of narcotic substances.

On April 23, 1974 the defendant was arraigned upon the within indictment and the defendant ANTONIO REYES pleaded not guilty and was released on a \$500.00 cash bond.

The defendant appeared on some 15 occasions during the course of this case which lasted until June 6, 1975.

On May 9, 1975 after the jury reached a verdict convicting the defendant on all counts, bail was set in the sum of \$5,000.00. The defendant was unable to make this bail and remained incarcerated from that date until the present.

On sentencing the defendant was remanded with leave

to move for bail pending appeal.

Thereafter a timely appeal was taken to the United States Court of Appeals for the Second Circuit. The Second Circuit on September 17, 1975, affirmed the defendant's conviction and ordered that its mandate be issued forthwith. A copy of the decision which the affirmance is based upon is annexed hereto and made a part hereof (see exhibit "A"). Upon information and belief, the defendant is presently incarcerated in the United States penitentiary in Lewisburg, Pennsylvania.

THE DISPARITY OF THE DEFENDANT'S SENTENCE AS COMPARED TO OTHERS SIMILARLY CHARGED AND CONVICTED IN AND WITHIN THIS INDICTMENT

It is the defendant ANTONIO REYES' contention that the sentence imposed upon him is excessive when compared with other defendants charged under the same indictment with the same or similar offenses or other defendants involved in even greater offenses.

The defendant ANTONIO REYES was sentenced to a term of imprisonment of 12 years to be followed by 3 years of special parole.

The co-defendant BRUNILDA RODRIGUEZ, who was tried and convicted along with this defendant received a term of imprisonment of 18 months and a term of probation to be followed thereafter. Ms. Rodriguez was convicted of the conspiracy count and the substantive count (counts 1 and 3). She too has a Rule 35 motion pending before this Court.

The co-defendant HECTOR SOTO who pled guilty during

the course of this trial received a term of imprisonment of 3-1/2 years for his participation in the said conspiracy and sales. The evidence adduced during the course of the trial indicated that Mr. Soto was a dealer of some substance in this conspiracy.

LUIS MEDINA, a co-defendant, pled guilty to the criminal sale of a narcotic substance and received a term of imprisonment of 3-1/2 years. He actually made a direct sale of a narcotic substance to the undercover agent.

RICARDO QUILES was sentenced to a term of imprisonment of 4 years as a young adult offender. He along with Mr. Soto were higher up in this conspiracy and directly beneath the dealer.

VICTOR SOTO is presently a fugitive.

JOSEPH CAICCOLLA pled guilty and to date has not been sentenced. He is described by the undercover agent during the course of the trial as the man at the top of the ladder. He is the dealer or importer and the target of this investigation and indictment.

The defendant ANTONIO REYES was described by this Court during the course of the sentence as one who is not to be found to be a significant drug dealer in his own right, but who certainly was not the main target of this particular investigation.

ANTONIO REYES' participation in this conspiracy and subsequent sales were described best by the government's main witness ANGEL RODRIGUEZ who was the undercover agent who first made contact with Mr. Reyes.

Mr. Reyes was charged under counts 2 and 3 with

sales of a narcotic substance, to wit: heroin. The undercover agent stated that Mr. Reyes produced a seller in his apartment and enabled Mr. Rodriguez to make a purchase of heroin. Thereafter Mr. Reyes received the sum of \$100.00 for arranging this transaction.

Subsequently the undercover agent solicited Mr. Reyes to obtain another seller. Mr. Reyes was unable to but introduced the undercover agent to his co-defendant BRUNILDA RODRIGUEZ who subsequently introduced the undercover agent to QUILES and the SOTO brothers where a sale of heroin was made. Mr. Reyes received \$50.00 from the undercover agent for his introduction to Mr. Soto and Quiles.

It is important to note that the undercover agent during the course of trial testified that it was his opinion that Mr. Reyes did not know Mr. Soto nor did he know Mr. Quiles. His only connection was introducing Ms. Rodriguez to the undercover agent.

This defendant after a complete trial and hearing of all the evidence has been depicted to be no more than a minor participant in this conspiracy. Even though without his introduction this conspiracy would never have surfaced in the eyes of the government. It was REYES who made the necessary introductions for the agent to make the subsequent buys but at no time was any testimony elicited during the course of the trial that Mr. Reyes himself was involved in the actual transaction in the importation or distribution of any of the narcotic substances subsequently purchased. Nor was any testimony adduced during the course of the trial that Mr. Reyes shared in any of the proceeds of the

money given over by the agent to the narcotic sellers.

It is the opinion of your affiant that the sentence imposed upon ANTONIO REYES defits one of our major narcotic dealers.

It is the defendant's contention that the sentence imposed upon him is excessive when compared with the other defendants charged in this indictment with the same or similar crimes and also with other defendants involved in even greater offenses.

In 1972, the United States Attorneys' office undertook to make a study for the Southern District of New York. The study authorized by Whitney North Seymour, Jr., and published in April 1973 (New York State Bar Journal, April 1973 volume 45 #3) covered the sentencing of 645 individual defendants and it is acknowledged to be statistically sound.

Insofar as narcotic offenses are concerned, the study found that the average length of prison sentence imposed within the Southern District of New York was 62.4 months. In the instant case, the defendant ANTONIO REYES received 144 months; the disparity between the sentence imposed upon Mr. Reyes and the other co-defendants in this matter become more exacerbated when juxtaposed with the average length of sentence imposed by the federal district courts on a nationwide basis, to wit: 46.4 months (see 1972 annual report of director for the administrative office of the United States Court).

In addition to the study made by the United States Attorneys' Office, your deponent has undertaken a study of a number of narcotic cases which has been decided by the Court of Appeals for the Second Circuit from January 1, 1974 to date. That study which will be discussed below clearly demonstrates

that the sentence imposed upon ANTONIO REYES is excessive.

The narcotic cases analyzed in your deponent's study fall into two broad classifications: possession cases coupled either with middle level conspiracies or importation of hard drugs and the possession cases coupled with the so-called very large, well organized, corporate like conspiracies. An analysis and comparison of those cases with the one at bar makes it crystal clear that by no means should trafficking in narcotics be condoned, but that the sentence imposed upon this defendant may very well have been excessive.

(a) Major conspiracy cases

In U.S. v. Santana et al. Dkt. No. 74-1080 (2nd Cir. 8/19/74, Slip op. 5299 et al.) 14 defendants and 10 co-conspirators were named in an indictment charging them in participation in a far flung international French connection type narcotic conspiracy. After conviction the chief participants were sentenced as follows: Santana - 12 years; Rivera - 5 years; Quinones - 5 years.

In U.S. v. Cirillo et al. Dkt. No. 73-2426 (2nd Cir. 5/7/74, Slip op. 3297) the defendants were charged with a massive chain type conspiracy involving sophisticated suppliers, middlemen and customers who dealt in substantial amounts of heroin..."(Slip op. 3299). After conviction, the chief defendant Cirillo (here analysis to Caliccola) was sentenced to serve 25 years and 10 years special parole plus a fine, while each of his lieutenants received prison terms ranging from 5 to 10 years (Slip op. 3299). All the participants except Cirillo received concurrent sentences, none of which exceeded 10 years despite

the fact that most had been convicted under multiple counts.

In U.S. v. Sperling, et al. Dkt. No. 73-2363 etc. (2nd Cir. 10/10/74 Slip op. 5637 et sec.) was characterized by Court of Appeals as a very large well organized and highly profitable conspiracy existing from May 1971 to mid April 1973. Upon conviction, Sperling and the main culprit was sentenced to life imprisonment - 30 years concurrent on several substantive counts together with a special parole term and substantial fine. Significantly however, the maximum sentence imposed upon any of his so-called lieutenants were as follows:

Goldstein	8 years on count 1; 3 years special parole - \$25,000 fine
Bless	10 years on counts 1,4,5 and 6 concurrent; 3 years special parole - \$25,000 fine on all counts
Juan Serrano	12 years on counts 1,7 and 10 concurrent; 6 years special parole - \$50,000 fine on all counts
Bassi	12 years on counts 1; 6 years special parole - \$5,000 fine
Berger	3 years on counts 1; 3 years special parole - \$10,000 fine
Frank Serrano	5 years on counts 1 and 3; 6 years special parole - \$5,000 fine on both counts
Valentine	12 years on counts 1 and 11; concurrent; 6 years special parole - \$50,000 fine on all counts
Del Busto	5 years on counts 1 and 11; 3 years special parole - \$10,000 fine on both counts
Garcia	10 years on counts 1 and 11; 6 years special parole - \$25,000 fine

Schworak

8 years on counts 1; 3 years
special parole - \$10,000 fine

It is noteworthy that on information and belief Juan Serrano, Frank Serrano and Valentine were second felony offenders. Bassi was a third felony offender.

In U.S. v. Pomares and Vegiana Dkt. No. 74-1219 (2nd Cir. 7/5/74) prosecution for conspiracy in traffic and narcotics and with the substantive offense of distributing in excess of 7 kilograms, the defendants received 5 years and 7 years imprisonment respectively.

THE MIDDLE LEVEL CONSPIRACY

U.S. v. Freeman, Dkt. No. 74-1238 (2nd Cir. 6/7/74, Slip op. 4011) was a prosecution for conspiracy to import a dangerous drug, for three substantive violations of possession with intent to distribute cocaine. After conviction the defendant was given 2 years plus 5 years special parole.

U.S. v. Rivera, Dkt. No. 74-1079 (2nd Cir. 5/17/74, Slip op. 3591) involved a charge of conspiracy to traffic in narcotics and the substantive offense of possession with intent to distribute. After conviction the defendants received 2 years imprisonment together with 3 years special parole.

Similarly, U.S. v. Fratinni, Dkt. No. 74-1262 (Slip op. 5327) involved possession of cocaine and conspiracy to possess and distribute the same. After conviction, a sentence of 3 years was imposed but all but six months was suspended.

U.S. v. Bizzuto, Dkt. No. 74-1724 (2nd Cir. 10/9/74, Slip op. 79) the defendants were prosecuted and convicted for possession with intent to distribute and conspiracy to distribute

13 kilograms of hard drugs. After conviction, the sentence imposed was 4 years on each count concurrent plus 3 years special parole.

In U.S. v. Torres, Dkt. No. 74-1698, (2nd Cir. 10/8/7 Slip op. 5619) those convicted of conspiracy to violate the narcotics law were given one year imprisonment plus special parole. See also, U.S. v. Glover, Dkt. No. 74-1739 (2nd Cir. 10/4/74, Slip op. 33,) conviction for conspiracy to violate Federal narcotics laws, one year imprisonment and three years special parole and U.S. v. Driscoll, Dkt. No. 2005, 2nd Cir. 5/6/74, Slip op. 3261, a prosecution for unlawful importation of large quantities of hashish. After conviction, the defendant received a sentence of 7-1/2 years.

The conclusion drawn from an analysis of the above described cases compared with the instant case is that Mr. Reyes allegedly at the lowest level in the organization received a much severer sentence than those involved in similar positions in other cases, and within his own case.

The fact that Mr. Reyes' sentence was excessive when compared to others similarly situated is bolstered by the recent study on sentencing disparity made in the Second Circuit. The study entitled "The Second Circuit Sentencing Study", a Report to The Judges of the Second Circuit, was undertaken by a 16 member committee under the auspices of the Chief Judge of the Court of Appeals.

As this Court may be aware, the study involved 20 hypothetical cases involving a variety of offenses. In each case, a pre-sentence report was prepared and furnished to each U.S. District Judge sitting in the Second Circuit. The District

Court Judges were then asked to impose what they believed to be an appropriate sentence in each of the cases. Although the sentences imposed in each of the 20 cases by the various Judges were significant in showing the disparity of sentences within the Circuit, one case of the study is particularly appropriate in the instant application. That case, designated Case #3 in the study, involved the sale of Heroin under 21 U.S. Code Section 841(a). The pre-sentence report indicated that the defendant was convicted by his plea, was over forty, and had 7 prior convictions. The report also indicated no significant narcotics use and current employment as a cab driver. (See Sentencing Study Appendix A-10,

Of the 46 Judges responding, the most severe sentence imposed by one judge was 10 years imprisonment followed by 5 years special parole. The least severe sentence imposed was 1 year imprisonment to be followed by 5 years special parole. Thirty-seven of the forty-six Judges responding imposed a prison term of 5 years or less. No judge imposed the maximum sentence, notwithstanding the defendant's extensive prior record. A comparison of this case with the one at bar indicates the draconian tenor of the sentence imposed by this Court.

THE SENTENCE IMPOSED UPON
ANTONIO REYES WAS BASED
UPON ERRONEOUS FINDINGS OF
FACT AND AS SUCH SHOULD BE
VACATED

At the imposition of sentence the Court relied upon the following information supplied by the Department of Probation and made a determination as to the length of said sentence of this defendant. The Court stated "the defendant has been supported by welfare for the past six or seven years". The fact is that Mr. Antonio Reyes has been receiving federal assistance for a disability for almost two years prior to his incarceration. He is receiving the sum of \$206.00 a month from the United States Government. The defendant also supplemented his income by receiving \$25.00 per week as a superintendent in the building in which he resided.

The Court also upon sentence stated "you have a family, and this is your eleventh criminal conviction in the past fourteen years".

Police Report

The defendant ANTONIO REYES' criminal record supplied by the police department of the City of New York and made exhibit "B" and the Federal Bureau of Investigation criminal record which was supplied to the Probation Department at the time of sentence annexed hereto and made exhibit "C" contain a series of 18 arrests and 7 or 8 convictions.

An examination of the two arrests and conviction records, one supplied by the Federal Bureau of Investigation and the other supplied by the police department of the City of New York indicate a variance of the number of convictions and arrests the defendant had.

Not only does the variance exist as to the number of convictions but also as to the individual who was in fact arrested. The following names appear on said arrest records of the City and Federal Bureau of Investigation. Jose Torres, Antonio Reyes, Epifino Estrada, Epifino Ortiz, Antonio Rios Reys, Antonio Reyes Rios and Jose L. Tores.

A further examination of the criminal court records of the City of New York, County of Bronx was had by the defendant's attorney with the assistance of the chief clerk of the criminal court in searching the records of the Special Sessions Court in the City of New York from 1961 until 1969; annexed hereto and made a part hereof are exhibits numbered 1 through 6 which are certified certificates of disposition. These certificates of disposition are the only accurate and first hand history of this alleged defendant's violations and convictions which can be documented by the arrest books and disposition books of that courthouse in that county.

The certified certificates of disposition indicate that this defendant was arrested on 6 separate occasions during the period of 1961 up until 1969. Those certificates of disposition indicate the following crimes and dispositions:

Docket No. SS1117/1961, convicted of petty larceny - sentenced 60 days.

Docket No. 3716/1962, convicted of possession of a hypodermic needle - sentenced - time served.

Docket No. 853344/1965, charged with grand larceny - dismissed 8/24/65.

Docket No. B1240/1966, convicted of petty larceny - sentenced - suspended.

Docket No. A5719/1969, convicted of grand larceny - third degree - a misdemeanor - sentenced - 8 months.

Docket No. A345/1964, convicted of Section 722-6 of the Penal Code - disorderly conduct - sentenced - 3 months.

It must be noted that it is, and has been, the practice of the police department of the City of New York to list all precinct arrests where no further action has been taken on the part of the police department complainant or the courts. These precinct arrests for all intents and purposes are in fact not acted upon in our judicial system within the State of New York, but rather based upon complaints of various individuals against a defendant. For want of prosecution or for a closer examination of the complainant in the case the charges against the defendant are usually dropped within the precinct. Unfortunately this arrest at the precinct level is carried forward and included on a rap sheet.

It must be noted that the crimes the defendant were convicted of indicate 3 convictions for disorderly conduct. One conviction for possession of a hypodermic needle in 1962 and 2 convictions of petty larceny.

It must be noted from 1969 up until 1973, the time this case was brought before the court, the defendant had an unblemished arrest and conviction record.

The defendant admittedly was a drug addict for some 15 to 17 years. He was a member of the New York City Methadone Program during 1972 up until 1974. At that time he became drug free and although has visited the Program on various occasions he has

maintained himself in a drug free atmosphere. This is possibly one of the reasons why he continued to receive disability payments from 1974 up until 1975 from the United States Federal Government. These payments supplemented his earning capacity as a superintendent in the building in which he lived. He was never on welfare with the City of New York.

THE DEFENDANT'S BACKGROUND,
BEHAVIOR AND CONTRITENESS
SINCE HIS ARREST IN NOVEMBER
1973

The defendant ANTONIO REYES, was born July 4, 1937 in San Juan, Puerto Rico. He is the youngest of three children. His father died the same year he was born.

He arrived in New York and began living with his sister who is a legal secretary. From the date of his arrival up until 1969 or 1970 the defendant became addicted to drugs.

He held a variety of jobs never lasting for more than a year.

He had a series of arrests and convictions during this period of time which were all drug related.

In 1969 ANTONIO REYES met and married Lucy Reyes and fathered two children, Aresalis Reyes who is 5 years old and Anthony Reyes, Jr. who is 3 years old. From the time of his marriage until his present arrest in this case, the defendant although not drug free became a bit more responsible to the needs in his community and to his family. He enlisted with the New York City Methadone Program in 1971 and remained there 2-1/2 years legally receiving methadone medication. During this period of time from 1969 up until he departed from said Program in 1974

the defendant was never convicted of a crime. He through self-help committed himself to go off the methadone maintenance program and became absolutely drug free.

He has made a comfortable home for his wife and two children. He has the love of a father and the responsibility of any husband. His education although limited has not prevented him from holding two or three jobs at the same time. It must be noted that even though he was receiving disability payments from the federal government he was supplementing that income by working as a superintendent in the building in which he lived at \$25.00 per week and also working in the candy store as a soda fountain clerk for a period of one year during the time of his arrest and conviction.

His relationship with the family, both his sister and brother, his wife and children are very close knit. His wife has visited him on weekly visits, travelling to Pennsylvania with her children.

The family needs the direction and love that ANTONIO REYES can give them.

Limited as his income may be and as informal as his education is, he has exhibited a willingness to accept the responsibility of being the head of his household from the time he married Lucy Reyes until the time he was convicted in this case.

His absence of any arrests from 1969 to 1973, although admittedly is only a period of four years, does show to your affiant a willingness on his part to accept a responsible position in society.

The multitude of arrests and convictions prior to his

marriage, his addiction to drugs prior to his marriage, his inability or unwillingness to help himself prior to marriage indicates a lost soul and petty criminal.

Marriage has served a worthwhile purpose in rehabilitating this individual. The responsibility of a wife and children has also placed a responsibility on this individual which he willingly took and sought to improve the position of his family by maintaining himself in a series of work programs and limiting his involvement with narcotics.

WHEREFORE, your affiant respectfully requests that the Court reduce and modify the sentence of imprisonment for the foregoing reasons, and for such other and further relief as to this Court may seem just and proper under the foregoing circumstances.

Dated: New York, New York
October , 1975.

LAWRENCE H. LEVNER

(The following statement does not constitute a formal opinion of the court and is not to be reported. It shall not be cited nor otherwise used in unrelated cases.)

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

UNITED STATES OF AMERICA,
Appellee,

v.

#75-1216

ANTONIO REYES and
BRUNILDA RODRIGUEZ, et al.,
Appellants.

Before: FRIENDLY, TIMBERS and GURFEIN, Circuit Judges.

New York, N. Y.,
September 17, 1975.

Statement made by the Court at disposition of appeal in open court.

TIMBERS, Circuit Judge:

We have carefully considered the briefs, the relevant portions of the record, and we thank Mr. Levner for his very zealous and loyal representation of his client, but we are satisfied that in both cases - both the Peyes case and the Rodriguez case - there is no error, and we affirm from the bench. We also deny the Reyes motion for bail.

Judge Friendly has reminded me, which of course I very much appreciate, that the decision by this court in this case on this record just announced is without prejudice to any rights that the appellant Reyes may have including the rights suggested by Judge Gurfein.

A-43

PRISONER'S CRIMINAL RECORD

POLICE DEPARTMENT
CITY OF NEW YORK

BUREAU OF
CRIMINAL IDENTIFICATION

NAME Antonio Ruiz Epifanio Estrada Ortiz

B # 519 805

ALIAS Antonio Reyes Rios, Antonio Reyes, Jose Torres

E #

This certifies that the finger impressions of the above named person have been compared and the following is a true copy of the records of this bureau.

D.C.I. # 939319

F.B.I. # 475

Date of Arrest	NAME	Borough or City	CHARGE	Arresting Officer	Date, Disposition Judge and Court
3/1/61	Antonio Ruiz	Bronx	Att. Pet. Larc.	Black 12 Sgd.	3/21/60 60 d. S.S. Galloway, Sess.
X12/2/61	Antonio Reyes Rios	P.D. Puerto Rico	-	-	-
7/24/62	Jose L. Torres	Bronx	3305 PHL & 17476 PL	Coyle 11 Pet.	Spec. Sess. 8/11 Doc. #3716 3305 8/21/62 Time Se Martinis.
4/6/63	Antonio Reyes	Bronx	722-6 PL	McKenna PP&C Sgd.	4/23/63 6 Mos. Bottiglieri-C
1/18/64	Antonio Reyes	Bronx	722-6 PL	O'Brien PP&C Sgd.	1/22/64 3 Mos. Breslin, Crim.
X2/17/64	Antonio Reyes	NYC	722-3 PL (Congregating)	D.J.	3 Mos.
8/23/65	Antonio Reyes	Bronx 2928-40	Gr. Larc.	Simone PP&C	9-29-65 Dismi
*2-20-66	Antonio Reyes	Bronx	Pet Larc	Coyne 41 Sgd.	2-21-66 CrCo Doc #1840 Ar 3-1-66
3-11-66	Antonio Rios Reyes	Bronx 1004-41	Fugitive (Warrant)	Morgal 41 Sgd	-
12-5-66	Epifanio E. Ortiz	Bronx 4891-41	Burglary	Hoffman 41st Pet	-
3-10-67	Antonio Reyss	Bronx 2154-48	Gr Larc	Cole 48 Pet	-

Record prepared on _____

Date

By _____

Signature

EXHIBIT-B

NAME AND ADDRESS GIVEN	BOROUGH OR CITY, ARREST NO./PCT.	CHARGE	ARRESTING OFFICER	DATE, DISPOSITION, JUDGE AND COURT
Antonio Reyes 3336-42	Bronx 3336-42	165.25 PL Jostling 155.30 PL Gr. Larc.	Jennings PP&D	6-6-69- Dkt. #A5719 Final Chg: Att. Gr. Larc. 3rd - 8 mos. Jdg. Bloom
Antonio Reyes 931 Fox St. Bx.	Bronx 2795-42	155.30-B Gr. Larc.	Fitzsimmons 42 Pct.	6-6-69 8 Mos NYC Reopt Center X/374
Anthony Reyes 3305 3 Ave.	Bronx 1291-48	PL 140.20 Burglary PL 140.35 Poss Burg. Tools	Milano 43 Pct.	
Antonio Reyes 3009 3 Ave	Bronx 5345-48	PL 155.30-1 G/L/A-3 PL 165.40 Poss Stln Prop-3 PL 165.05-1 Unauth Use Mtr Veh	Schwab 48	
Antonio Reyes 1756-48	Bronx 1756-48	225.15 PL Poss Gamb Rec.	Williams 46 Pct.	
Antonio Reyes 300 Monroe Ave	Bronx 26077-48	PL 215.56-2 Bail Jumping	Williams 48 Pct.	
REYES, ANTONIO		US3841(a) CSDB	FIANNERY NYDNBP/OCCE	
CONTINUED ON PAGE				EXHIBIT B

WASHINGTON 25, D.C.

IDENTIFICATION DIVISION
1-20-66
is furnished FOR OFFICIAL USE ONLY.

The following FBI record, NUMBER 475 052 E

CONTRIBUTOR OF FINGERPRINTS	NAME AND NUMBER	ARRESTED OR RECEIVED	CHARGE	DISPOSITION
PD NY NY	Jose Torres #519805	7-24-62	3305 PHL 1747 D PL	
PD NY NY	Antonio Reyes #B519805	4-6-63	722-6 PL jostling	
WH Hart Isl NY NY	Antonio Reyes #163 5535	4-23-63	722-6 jostling	6 mos
PD NY NY	Anthony Reyes #B519805	1-18-64	722 PL sub 6 jostling	
WH Hart Isl NY NY	Antonio Reyes #02571	2-17-64	722-3 Congregating on street	3 mos
PD NY NY	Antonio Reyes #519805	8-23-65	CL (from auto)	
PD NY NY	Antonio Rios Reyes #B519805	3-11-66	Fugitive - Puerto Rico	
Crim Cts City of NY NY NY	Antonio Reyes #627516 1240 x 66	3-15-66	PL	90 das WH SS
PD NY NY	Epifanio Estrada #519805	12-5-66	burg	
Crim Cts City of NY NY NY	Epifanio Ortiz #8690 X 2C-66	12-7-66	burg to 405	4 mos
WH Hart Isl NY NY	Epifanio Ortiz #366, 8076	12-8-66	house 405	4 mos

EXHIBIT C

Information shown on this Identification Record represents data furnished FBI by fingerprint contributors. Where final disposition is not shown or further explanation of charge is desired, communicate with agency contributing those fingerprints.

Notations indicated by * and NOC

A-46

UNITED STATES DEPARTMENT OF JUSTICE
FEDERAL BUREAU OF INVESTIGATION
WASHINGTON, D.C. 20537

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shown on this Identification Record represents data furnished FBI by fingerprint contributors. WHERE
DISPOSITION IS NOT SHOWN OR FURTHER EXPLANATION OF CHARGE IS DESIRED, COMMUNICATE
AGENCY CONTRIBUTING THOSE FINGERPRINTS.

CONTRIBUTOR OF FINGERPRINTS	NAME AND NUMBER	ARRESTED OR RECEIVED	CHARGE	DISPOSITION
PD NY NY	Antonio Reyes #519805	8-10-67	GL	
NYC Receipt Class Center East Elmhurst NY	Antonio Reyes #767 1671	12-18-67	pet lar	1 yr
PD NY NY	Antonio Reyes #519805	9-3-68	165.25 PL A misd jostling 155.30 PL B fel GL pickpocket	
NYC Receipt Class Center East Elmhurst NY	Antonio Reyes #768 4064	9-12-68	pet lar	6 mos
PD NY NY	Antonio Reyes #519805	6-4-69	PL 155.30-3 GL 2	
NYC Receipt & Class Cor East Elmhurst NY	Antonio Reyes #769 3407	6-9-69	att GL	8 mos
PD NY NY	Anthony Reyes #519 805	8-10-71	PL 140.20 burg PL 140.35 poss of burg tools	
PD NY NY	Antonio Reyes #519805	11-20-71	Grand Larc 155.30 Pl E Fel Crim Poss Stln Prop 165.40 Pl A Misd Unauth use of Motor Veh 165.05 PL A Misc	

Exhibit 1

A-47

2-5-75

UNITED STATES DEPARTMENT OF JUSTICE
FEDERAL BUREAU OF INVESTIGATION
IDENTIFICATION DIVISION
WASHINGTON, D.C. 20537

FBI record, NUMBER 475 052 E, is furnished FOR OFFICIAL USE ONLY.
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DISPOSITION IS NOT SHOWN OR FURTHER EXPLANATION OF CHARGE OR DISPOSITION IS
NOT COMMUNICATE WITH AGENCY CONTRIBUTING THOSE FINGERPRINTS.

CONTRIBUTOR OF FINGERPRINTS	NAME AND NUMBER	ARRESTED OR RECEIVED	CHARGE	DISPOSITION
NY NY	Antonio Reyes 519805 SID 939319Y	4-4-73	PL 225.15 poss gamb rec	
NY NY	Antonio Reyes 519805 SID 939319Y	9-14-73	bail jumping	
Det Hdqtrs NY	Antonio Reyes 79605 158	11-7-73	Viol Narc Laws SK Connlin NYUTP/Agt	
New York NY	Antonio Reyes CT-73-0151	11-7-73	Cr. Sales Dang Drug Heroin	
NY NY	Antonio Reyes SID 939319Y	1-22-75	1. Burg 2 2. Grd Larc 3 3. Agg Harassment	

EXHIBIT C

CRIMINAL COURT OF THE
CITY OF NEW YORK

Part sp, County of Bronx

CERTIFICATE OF DISPOSITION
No 226611

Docket No. 1117 1964

THE PEOPLE OF THE STATE OF NEW YORK

vs.

NAME Antonio R. [illegible] AGE 40
ADDRESS 1117 [illegible]
CITY NYC STATE NY
OFFENSE 1st [illegible]

DATE OF OFFENSE 11-1-63
DISPOSITION 1st [illegible]

DATE OF DISPOSITION 3-25-64
CRIMINAL COURT PART 1st [illegible] COUNTY Bronx
JUDGE [illegible]

I hereby certify that this is a true excerpt of the record
on file in this Court.

DATE 11-1-64 1964
COURT OFFICIAL (Signature) [illegible] Title [illegible]

CRIMINAL COURT OF THE
CITY OF NEW YORK

Part 5/3, County of Brooklyn

CERTIFICATE OF DISPOSITION

Nº 226610

Docket No. 3716 1967

THE PEOPLE OF THE STATE OF NEW YORK

VS.

NAME Joseph L. Torres AGE 1

ADDRESS 101

CITY Brooklyn STATE NY

OFFENSE 7-14-67

DATE OF OFFENSE 7-14-67

DISPOSITION Time Served

DATE OF DISPOSITION 8-24-67

CRIMINAL COURT PART 5/3 COUNTY Brooklyn

JUDGE 11111

I hereby certify that this is a true excerpt of the record on file in this Court.

DATE 9-24-70 1970

COURT OFFICIAL (Signature)

Title

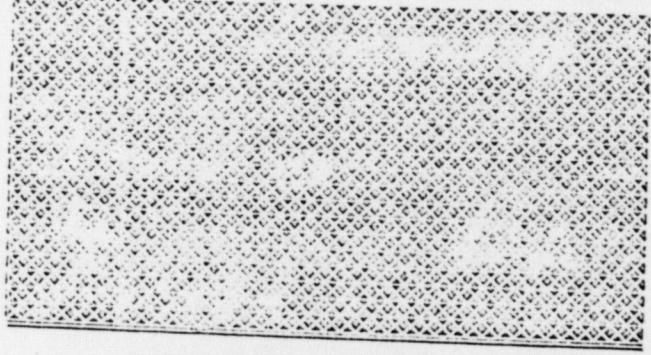
Part 121, County of Brooklyn
RECEIPT
CERTIFICATE OF DISPOSITION

No 226608

Docket No. 92-111 1965
THE PEOPLE OF THE STATE OF NEW YORK

VS.

NAME Antonio Lopez AGE 15
ADDRESS 61 5th Ave
CITY Brooklyn STATE NY
OFFENSE 1st Degree Robbery
DATE OF OFFENSE 8-20-65



RECEIPT ACKNOWLEDGED
FEE \$4.00

DATE 9-9-70 1970
COURT OFFICIAL (Signature) [Signature] Title Clk

CRIMINAL COURT OF THE
CITY OF NEW YORK

Part Bel, County of Bronx

CERTIFICATE OF DISPOSITION

No 226609

Docket No. 91240 19 9

THE PEOPLE OF THE STATE OF NEW YORK

vs.
Antonio Rivera 28
 NAME AGE
712 Broadway
 ADDRESS
NYC NY
 CITY STATE
 OFFENSE
2-2-64
 DATE OF OFFENSE
1-4 to 1st Lane
 DISPOSITION
3-11-64
 DATE OF DISPOSITION
10
 CRIMINAL COURT PART COUNTY
112 Broadway
 JUDGE

I hereby certify that this is a true excerpt of the record on file in this Court.

DATE 9-5-75 19 75
[Signature]
 COURT OFFICIAL (Signature) Title

A-52

CRIMINAL COURT OF THE
CITY OF NEW YORK

Part 17, County of Queens

CERTIFICATE OF DISPOSITION
No 226607

Docket No. 95719 1969

THE PEOPLE OF THE STATE OF NEW YORK

VS.

NAME Arthur Hayes AGE 22
ADDRESS 411 4th Street
CITY Brooklyn STATE NY
OFFENSE 1st - 5th - 6th
DATE OF OFFENSE 11-10-68
DISPOSITION 8 Months
DATE OF DISPOSITION 6-6-69
CRIMINAL COURT PART 1A COUNTY Queens
JUDGE John J. Brown

I hereby certify that this is a true excerpt of the record
on file in this Court.

DATE 9-11-75 1975
COURT OFFICIAL (Signature) [Signature] Title clerk

EXHIBIT

A-53.

CRIMINAL COURT OF THE
CITY OF NEW YORK

Part 92, County of Brock

CERTIFICATE OF DISPOSITION

No 226612

Docket No. 92-3445 1965

THE PEOPLE OF THE STATE OF NEW YORK

vs.

NAME

AGE

ADDRESS

CITY

STATE

OFFENSE

DATE OF OFFENSE

DISPOSITION

DATE OF DISPOSITION

CRIMINAL COURT PART

COUNTY

JUDGE

I hereby certify that this is a true excerpt of the record
on file in this Court.

DATE 9-25-73 1973

COURT OFFICIAL (Signature)

Title

EXHIBIT 6

Esther Reyes
2084 Creston Ave.
Bronx, New York 10

Oct. 2, 1975

Hon. Judge Charles L. Bricant
United States District Court
Foley Square
New York, N.Y.

Honorable Sir:

I am writing you and at the same time trying to convey and plead on behalf of my brother, Antonio Reyes who has been sentenced to prison for the period of 12 years.

I wish to appeal to this court in behalf of myself, my mother who is 74 years old and very ill. She is anxious to receive mail from him every week. Since he was sentenced on June 6, 1975, he has not been able to write to her in P.R.
I wish to inform you that my brother

inquiries in the lead. I am not implying or justifying that I condone his actions.

Your Honor, I want the court to understand that from all the immediate family, he is the only one who has been in problems with the Law. I begg the courts indulgence and leniency for my brother A. Reyes. This is not for himself, but for our mother's health and the security of his wife and children.

Sincerely Yours.
Aether Reyes

Mr. Miguel A. Santiago
2431 Webb Avenue
Bronx, New York 10453

Honorable Charles L. Brieant
United States Judge
United States District Court
Southern District of New York
 Foley Square
New York, New York

RE: Antonio Reyes
79695
Lewisburg Federal
Prison

Honorable Judge Brieant:

It is my intention in this letter to present a sound judgement of character of the defendant Mr. Antonio Reyes. As a social worker and a professional I deal with persons such as Mr. Reyes every working day and night. I do not condone nor will I try to vindicate the actions by which Mr. Reyes has come upon to strike out at society, I only desire to present a reputable position on behalf of Mr. Reyes' good character and self-esteem.

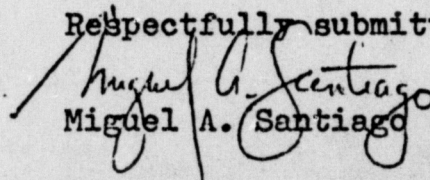
I've known the defendant for a decade or more and in this time encountered many episodes in the life of Mr. Reyes which have helped me formulate a strong belief that Mr. Reyes has been a victim of society and circumstances.

Although Mr. Reyes' list of criminal offenses might be indicative of some sort of criminal tendencies one would have to have known Mr. Reyes, been able to be in position to help and work with Mr. Reyes to understand his good nature, willingness to rehabilitate and return to a society which he so much wants to comprehend.

For the past five or six years I have seen a remarkable improvement in Mr. Reyes. His desire to rehabilitate has proven to me that he is not of criminal mind and his desire to build a family is truly indicative of a man who wishes to adhere to the American way of life. Mr. Reyes is a prime example of a man trapped in a society which he does not understand fully and a society which does not fully understand him.

It is my contention that Mr. Reyes is a man of sound character, a man who respects the American institution of family life and a man caught in a web which he has not woven.

Respectfully submitted,


Miguel A. Santiago

Mrs. Lucy Reyes
1815 Monroe Ave.
Bronx 10457 N.Y.C.

Hon. Judge Charles L. Bryant
United States District Court
Foley Square, New York N.Y.

Your Honor:

I address myself to you in reference to my husband, Antonio Reyes, to inform the Court that he has always been a good father and husband. I and my children miss him profoundly. He has always been a good provide to me and my children. Even though he was suffering from drug addiction.

He is a helpful person to anyone in need. He is also the type of husband who likes to help in the house, play with his children and care for the family.

I wish the Court to understand that before this problem happened he was employed both a Building Superintendent and washing machines operator. Hoping that this Court in behalf of Human nature and social justice give the most careful attention to this matter.

I remain truthfully,
Lucy Reyes

A-58

1815 Monroe Ave.
Bronx N.Y.C. 10457

October 5, 1975

Honorable Charles L. Brieant
United States Judge
United States District Court
Southern District of New York
Toley Square
New York, New York

RE: Antonio Reyes
#79695
Lewisburg Federal Prison

Your Honor:

This is a letter from an unbiased neighbor to plea with your goodself for the sentence bestowed upon Antonio Reyes this year. The concerned prisoner was a good and helpful neighbor to myself and to my family. In the four years that I have known him, he had always been very respectful to my family and to others who reside in the same premises. I have personal knowledge of the hard work he has done as a man in order to maintain a descent home for his wife and children.

I was shocked at the news of his arrest and conviction and although this man did a wrong deed, I can't help expressing myself for his positive character as a human being.

I know he is a hard working man with good intentions for his family and very cooperative with his fellow man around him. I am sure his misdeed was something that he is very sorry for knowing the effort that he had made to strive in life to accomplish his duties as a husband, father and neighbor. I am confident that Antonio Reyes is one man that I know who will probably never allow life to get him so desperate as to commit another mis-doing against society.

Your Honor; I Manuela Rodriguez, would not become involved in such a matter as pleading for an unrelated person if I didn't sincerely believe that such a person was worthy. I therefore, ask you as a citizen who wants to have a saying in justice to please take into consideration this letter from myself and RE-consider the sentence passed on the life of this man who made a mistake.

Thanking you kindly for your time in reading letter, I am

Sincerely Yours,

Manuela Rodriguez

Mrs. Linda King
333 E. 176 St. - 5D
Bronx, N.Y. 10457

Honorable Charles P. Briant
United States Judge
District Court, Foley Square

Re: Antonio Reyes
79695
Kew-Forest Federal Prison

Dear Judge Briant:

I wish to make an appeal
to you on behalf of my cousin,
Antonio Reyes, who was sentenced
on June 6, 1975 to 12 years.

He has been legally married
for the past six years and has two
infant children (a son 2 years of age
and a daughter 5). Although my
cousin should be punished for
the crime which he committed,
the sentence given to him is too harsh.

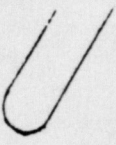
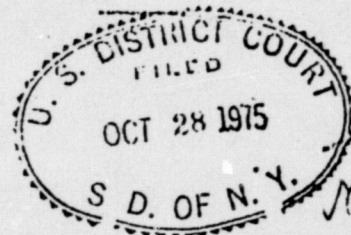
Re: Antonio Reyes
#79695
Levensburg Federal Prison

Very Severe.

I am not pleading on behalf of my Cousin himself, but on behalf of his wife and children, who will grow up and become old without ever seeing or knowing their father.

Please, your Honor, will you make some allowance for them in reconsidering the sentence.

Truly and respectfully,
Linda Reyes


Endorsement

UNITED STATES OF AMERICA v. ANTONIO REYES, Defendant. 74 Cr. 382-CLB

The sole significant point raised in the annexed motion is that the Court, upon imposing sentence, may have incorrectly stated that defendant had suffered eleven criminal convictions in the past 14 years, while defendant's counsel claims that there is a variance in the records concerning Reyes' prior criminal conduct, caused apparently in part by his use of different names. Counsel for defendant contends that the record supports an inference of no more than "seven or eight convictions." The Court accepts the statements as true for purposes of this motion, and will reduce sentence accordingly.

The defendant is resentenced to serve a term of ten (10) years, to be followed by a three (3) year special parole, as required by Title 21 of the United States Code.

So Ordered.

Dated: New York, New York
October 28, 1975

Charles L. Briant Jr.

CHARLES L. BRIANT, JR.
U. S. D. J.



AMENDED

A-62
United States District Court

United States of America vs.

DEFENDANT

ANTONIO REYES

Southern District of New York

DOCKET NO.

74 Cr. 302 GLB

JUDGMENT AND PROBATION/COMMITMENT ORDER

In the presence of the attorney for the government
the defendant appeared in person on this date

MONTH	DAY	YEAR
10	20	'75

COUNSEL

☐ WITHOUT COUNSEL

However the court advised defendant of right to counsel and asked whether defendant desired to have counsel appointed by the court and the defendant thereupon waived assistance of counsel.

☒ WITH COUNSEL

(Name of counsel)

PLEA

This Court grants defendant's motion for reduction of sentence pursuant to Rule 35 of the F.R.C.P. and awards 10 years imprisonment of 6-6-75 to 6-6-85. **NOLO CONTENDERE**, ☒ **NOT GUILTY**

GUILTY, and the court being satisfied that there is a factual basis for the plea,

FINDING & JUDGMENT

There being a finding/verdict of

☐ NOT GUILTY. Defendant is discharged☒ GUILTY.

Defendant has been convicted as charged of the offense(s) of

to distribute and possess with intent to distribute heroin I. (Title 21, U.S. Code, Sects. 812, 841(a)(1) and 841(b)(1)(A) and Title 18, U.S. Code, Sect. 2.); conspiracy to do (Title 21, U.S. Code, Section 846.)

Judgment dated 6-6-75 is amended as follows:

SENTENCE OR PROBATION ORDER

The court asked whether defendant had anything to say why judgment should not be pronounced. Because no sufficient cause to the contrary was shown, or appeared to the court, the court adjudged the defendant guilty as charged and convicted and ordered that: The defendant is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of

TEN (10) YEARS on each of counts 1, 2 and 3, to run concurrently with each other.

ADDITIONAL CONDITIONS OF PROBATION

Pursuant to Section 841 of Title 21, U.S. Code, defendant is placed on Special Parole for a period of THREE (3) YEARS, to commence upon expiration of confinement.

In addition to the special conditions of probation imposed above, it is hereby ordered that the general conditions of probation set out on the reverse side of this judgment be imposed. The Court may change the conditions of probation, reduce or extend the period of probation, and at any time during the probation period or within a maximum probation period of five years permitted by law, may issue a warrant and revoke probation for a violation occurring during the probation period.

COMMITMENT RECOMMENDATION

The court orders commitment to the custody of the Attorney General and recommends,

It is ordered that the Clerk deliver a certified copy of this judgment and commitment to the U.S. Marshal or other qualified officer.

SIGNED BY

☒ U.S. District Judge☐ U.S. Magistrate

Charles L. Bricant, Jr. 10-20-75

CERTIFIED AS A TRUE COPY

THIS DATE 10/20/75

By



COPY RECEIVED
JAN 21 1976
U. S. ATTORNEY
SO. DIST. OF N. Y.